

**C) Remarks:**

**Specification:**

The Specification has been amended to include reference to prior U.S. Application Serial Number 09/911,045, filed on July 23, 2001, Patent Number: 6,759,069.

**Response to Claim Objections:**

**The Objections to the claims in the Application have been corrected as follows:**

1. Claims 35 (second occurrence) – 55 have been renumbered to claims 36-56 and is reflected herein. Additionally, the dependency of the above-renumbered claims has been corrected by amendment.
2. The Objection to Claim 37 is noted. Claim 37 has been amended to reflect the required language “to” suggested by the Examiner, which corrects the noted typographical error.

**Response to Claim Rejections – 35 USC § 112:**

1. Claims 37 has been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

• **Specifically regarding the issue raised with respect to “surfaces”:**

The Examiner’s rejection to claim 37 under 35 USC § 112 is noted. It is believed by Applicant that the antecedent of “said surfaces” in claim 37 clearly refers back to the “surfaces” of the condiment sections in claim 21. There is only one mention of “surfaces” in claims 21 and 37. However, to further prosecution of the application, claim 37 has been amended for clarification to include “of said condiment” following “surfaces.”

**Response to Claim Rejections – 35 USC § 102 and 35 USC § 103:**

1. Claims 23, 30, and 36 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Durst, Patent No. 3,615,597.

• **Specifically regarding the rejection of claim 23:**

Applicant’s claim 23 recites: *“a) providing at least one condiment sheet; b) dividing said condiment sheet to form individual condiment slices.”*

It is noted that Durst does not teach the claimed method steps of claim 23. At column 3, lines 26-30, cited by the Examiner, Durst teaches, “the condiments of the present invention can be cubes, sheets, bars, rods, etc.” He further teaches at Column 3, lines 49-56, “the admixture was frozen and sliced into sheets...” Durst never discusses dividing the “sliced sheets” into food condiment slices – as required by Applicant’s claim 23. In fact, nowhere in the reference can the argument be made that Durst specifically recites and anticipates the limitations of claim 23. Also, Durst distinguishes that cubes, sheets, bars, and rods are different. In order for Durst to anticipate claim 23, Durst must recite the specific method steps in the order presented. Durst simply does not do this and claim 23 has been improperly rejected under 35 USC § 102.

A claim is anticipated by a reference only if each and every element as set forth in the claim is found in the reference. For these reasons, Applicant submits that Durst does not anticipate the claimed subject matter of claim 23. Accordingly, the Examiner is requested to withdraw this rejection.

- **Specifically regarding the rejection of claim 30:**

Applicant’s claim 30 recites: ***“a) providing a mold; b) depositing condiment into said mold; c) molding to form said condiment structure; d) removing said condiment structure from said mold.”***

It is noted that Durst does not teach the claimed method steps of claim 30. At column 5, lines 1-8, cited by the Examiner, Durst teaches, “The resultant product was poured into a... polyethylene mold and frozen. The resultant frozen product was then sliced into sheets...” Durst never teaches **removing the frozen product from the mold** prior to slicing the frozen product into sheets – where claim 30 requires removing the molded condiment structure from the mold. Applicant’s claim 30 recites ***“a) providing a mold; b) depositing condiment into said mold; c) molding to form said condiment structure; d) removing said condiment structure from said mold.”*** The active step of removing the condiment structure from the mold is not recited by Durst and cannot be assumed to be present. In fact, nowhere in the reference can the argument be made that Durst specifically recites and anticipates these claim

limitations. There is no evidence that Durst removes the product from the mold prior to cutting the frozen product. In order for Durst to anticipate claim 30, Durst must recite the specific method steps in the order presented. Durst simply does not do this and claim 30 was improperly rejected under 35 USC § 102. Accordingly, Durst does not recite the claimed limitation and does not anticipate the claimed limitation.

A claim is anticipated by a reference only if each and every element as set forth in the claim is found in the reference. For these reasons, Applicant submits that Durst does not anticipate the subject matter of claim 30. Accordingly, the Examiner is requested to withdraw this rejection.

- **Specifically regarding the rejection of claim 36:**

Claim 36 depends from claim 23. The Examiner rejects claim 36 as being anticipated by Durst, but does not specifically address the limitations of claim 36. Since the Examiner does not expressly state where in the reference the limitations of claim 36 are taught, then the claim is improperly rejected and the rejection should be withdrawn and the claim allowed.

**2. Claim 30 has been rejected under 35 U.S.C. 102(b) as being anticipated by Luck, Patent No. 3,966,993.**

- **Specifically regarding the rejection of claim 30:**

The rejection of claim 30 over Luck is noted.

**3. Claims 21, 23-27, 30, and 36 have been rejected under 35 U.S.C. 102(b) as being anticipated by Forkner, Patent No. 4,068,007.**

- **Specifically regarding the rejection of claim 21:**

The rejection of claim 21 over Forkner is noted.

- **Specifically regarding the rejection of claim 23:**

The rejection of claim 23 over Forkner is noted.

- Specifically regarding the rejection of claim 24:

Applicant's claim 24 recites: *"wherein said step of providing at least one condiment sheet comprises mating a plurality of condiment sheets together to form a condiment sheet structure."*

The Examiner indicates in the rejection of claim 24, *"Forkner teaches that two condiment sheets can be bound together with another condiment sheet as a bonding layer (Column 4 lines 26-50 and Figure 5)."* In response, the passage cited by the Examiner does not teach the claimed limitation and **the teaching cited by the Examiner cannot be located anywhere in the Forkner reference**. Note that Applicant's claim limitation requires that the food condiment be in form of a "sheet." Note also that Applicant provides distinct differences in meaning between "sheets" and "slices." Specifically, the slices are formed from sheets in Applicant's claim 23, from which claim 24 depends. The Forkner reference even distinguishes between "sheet" and "wafer" wherein wafers can be formed from sheets. Note that a wafer is not a sheet and the Examiner gives the impression that a "wafer" is a "sheet" (see Office Action at Page 4, second paragraph, where the Examiner recites, "Forkner teaches a process for forming a condiment slice (i.e. a condiment wafer)). The Examiner appears to be selecting and redefining different parts of the Forkner reference where necessary to meet claim limitations. Note that claim 24 recites *"wherein said step of providing at least one condiment sheet comprises mating a plurality of condiment sheets together to form a condiment sheet structure."* The Examiner appears to be attempting to use a "wafer" as a condiment sheet for meeting the limitation of *"mating a plurality of condiment sheets together"* in claim 24. However, Forkner never teaches, *"mating a plurality of condiment sheets together"* in claim 24. Also, the Examiner appears to be using "sheet" for meeting the limitations in *"providing at least one condiment sheet"* in claim 23 above. It is noted that claim 24 depends from and further limits claim 23. It is improper for the Examiner to use one part of a reference in the rejection of claim 23 and a second part of the reference with an alternative meaning for claim 24. The combination of claims 23 and 24 is a logical progression of method steps. It is improper to shift between alternatives in a reference to reject independent and dependent claims. The dependent claim must be read in

conjunction with the independent claim. Accordingly, the Examiner has misrepresented the teachings of Forkner as being rejected under 35 USC § 102 and is requested to withdraw this rejection.

A claim is anticipated by a reference only if each and every element as set forth in the claim is found in the reference. For these reasons, Applicant submits that Forkner does not anticipate the subject matter of claim 24. Accordingly, the Examiner is requested to withdraw this rejection.

- **Specifically regarding the rejection of claim 25:**

Claim 25 recites: *“wherein said forming method comprises a bonding step performed by heating at least one face surface of said plurality of condiment sheets.”*

The Examiner indicates in the rejection of claim 25, *“Forkner teaches that two condiment sheets can be bound together with another condiment sheet as a bonding layer (Column 4 lines 26-50 and Figure 5).”* In response, the passage cited by the Examiner does not teach the claimed limitation and **the teaching cited by the Examiner cannot be located anywhere in the Forkner reference.** Note that Applicant’s claim limitation requires that the food condiment be in form of a “sheet.” Note also that Applicant provides distinct differences in meaning between “sheets” and “slices.” The Forkner reference even distinguishes between “sheet” and “wafer” wherein wafers can be formed from sheets. Note that a “wafer” is not a “sheet” (see Office Action at Page 4, second paragraph, where the Examiner recites, “Forkner teaches a process for forming a condiment slice (i.e. a condiment wafer)). The Examiner appears to be selecting and redefining different parts of the Forkner reference where necessary to meet claim limitations. Note that claim 24, from which claim 25 depends, recites *“wherein said step of providing at least one condiment sheet comprises mating a plurality of condiment sheets together to form a condiment sheet structure.”* Note also that claim 25 recites *“wherein said forming method comprises a bonding step performed by heating at least one face surface of said plurality of condiment sheets.”* This means that at least one face surface of the plurality condiment sheets is heated for bonding. Nowhere does Forkner teach heating a food condiment sheet.

The Examiner appears to be attempting to use a “wafer” as a condiment sheet for meeting the limitation of “*mating a plurality of condiment sheets together*” in claim 24 and using “sheet” for meeting the limitations in “*providing at least one condiment sheet*” in claim 23 above. However, Forkner never teaches, “*heating at least one face surface of said plurality of condiment sheets*” as in claim 25 and “*mating a plurality of condiment sheets together*” as in claim 24. It is improper for the Examiner to use one part of a reference in the rejection of claim 24 and a second part of the reference with an alternative meaning for claim 25. The combination of claims 24 and 25 is a logical progression of method steps. It is improper to shift between alternatives in a reference to reject independent and dependent claims. The dependent claims must be read in conjunction with the independent claim. Accordingly, the Examiner has misrepresented the teachings of Forkner rejected under 35 USC § 102 and is requested to withdraw this rejection.

A claim is anticipated by a reference only if each and every element as set forth in the claim is found in the reference. For these reasons, Applicant submits that Forkner does not anticipate the claimed subject matter of claim 25. Accordingly, the Examiner is requested to withdraw this rejection.

- **Specifically regarding the rejection of claim 26:**

Claim 26 recites: “*wherein said method comprises providing at least one bonding layer positioned with said plurality of condiment sheets.*” Note that claim 24, from which claim 26 depends, recites “*wherein said step of providing at least one condiment sheet comprises mating a plurality of condiment sheets together to form a condiment sheet structure.*” This means that at least one bonding layer is positioned with said plurality of condiment sheets.

The Examiner indicates in the rejection of claim 26 “Forkner teaches that two condiment sheets can be bound together with another condiment sheet as a bonding layer (Column 4 lines 26-50 and Figure 5).” In response, the passage cited by the Examiner does not teach the claimed limitation and **the teaching cited by the Examiner cannot be located anywhere in the Forkner reference.** Note that Applicant’s claim limitation requires that the food condiment be in form of a “sheet.” Note also that Applicant provides distinct

differences in meaning between “**sheets**” and “**slices**.” The Forkner reference even distinguishes between “sheet” and “wafer” wherein wafers can be formed from sheets. Note that a wafer is not a sheet. The Examiner appears to be selecting and redefining different parts of the Forkner reference where necessary to meet claim limitations.

The Examiner appears to be attempting to use a “wafer” as a condiment sheet for meeting the limitation of “***mating a plurality of condiment sheets together***” in claim 24 and using “sheet” for meeting the limitations in “***providing at least one condiment sheet***” in claim 23 above. However, Forkner never teaches, “***providing at least one bonding layer***” as in claim 26 or “***mating a plurality of condiment sheets together***” as in claim 24. The combination of claims 23, 24, and 26 is a logical progression of method steps. It is unclear what the Examiner is using as a bonding layer. From the stated rejection in the Office action and the reference made to Figure 5 by the Examiner, it appears that the Examiner is defining some of the wafers as bonding layers. However, the Forkner reference teaches that the wafers are wafers and nothing else. Forkner distinguishes between “**sheet**” and “**wafer**” by forming sheets from which wafers are cut and, alternatively, forming wafers separately. The Examiner is taking the teachings of the Forkner reference out of context by simultaneously defining the same element as different elements under 35 USC § 102. Accordingly, the Examiner has misrepresented and misconstrued the teachings of Forkner under 35 USC § 102 and is requested to withdraw this rejection.

A claim is anticipated by a reference only if **each and every element as set forth in the claim** is found in the reference. For these reasons, Applicant submits that Forkner does not anticipate the claimed subject matter of claim 26. Accordingly, the Examiner is requested to withdraw this rejection.

• **Specifically regarding the rejection of claim 27:**

Note that claim 23 recites: “***a) providing at least one condiment sheet; b) dividing said at least one condiment sheet to form individual condiment slices.***”

Note that claim 24 depends from claim 23 and recites, “*wherein said step of providing at least one condiment sheet comprises mating a plurality of condiment sheets together to form a condiment sheet structure.*” This limitation refers back to step a) of claim 23 and means that a plurality of condiment sheets are mated together.

Claim 26 depends from claim 24 and recites: “*wherein said method comprises providing at least one bonding layer positioned with said plurality of condiment sheets.*” This step further limits claim 24 and means that at least one bonding layer is positioned with said plurality of condiment sheets.

Claim 27 depends from claim 26 and recites: “*wherein said method comprises a bonding step of heating at least one face surface of said at least one bonding layer and/or heating at least one face surface of said plurality of condiment sheets.*” This step further limits claim 26 and means heating at least one face surface of the bonding layer and/or at least one surface of the plurality of condiment sheets.

The Examiner indicates in the rejection “Forkner teaches that two condiment sheets can be bound together with another condiment sheet as a bonding layer (Column 4 lines 26-50 and Figure 5).” In response, the passage cited by the Examiner does not teach the claimed limitation and **the teaching cited by the Examiner cannot be located anywhere in the Forkner reference.** Note that Applicant’s claim limitation requires that the food condiment be in form of a “**sheet.**” Note also that Applicant provides distinct differences in meaning between “**sheets**” and “**slices.**” That is, slices are formed from sheets. The Forkner reference even distinguishes between “sheet” and “wafer” wherein wafers are formed from sheets. Forkner distinguishes between “**sheet**” and “**wafer**” by forming sheets from which wafers are cut and, alternatively, forming wafers separately. It is further noted that the claim limitations distinguish between “**bonding layer**” and “**condiment sheet.**” The Examiner appears to be selecting and redefining different parts of the Forkner reference where necessary to meet claim limitations.

The Examiner appears to be attempting to use a “wafer” as a condiment sheet for meeting the limitation of “*mating a plurality of condiment sheets together*” in claim 24 and using “sheet” for meeting the limitations in

*“providing at least one condiment sheet”* in claim 23 above. Also, Forkner never teaches, *“heating at least one face surface of said at least one bonding layer and/or heating at least one face surface of said plurality of condiment sheets”* as in claim 27. Note claim 27 recites that either or both of the bonding layer face surface and food condiment sheet face layer can be heated. It is unclear what the Examiner is using as a bonding layer. Forkner does not teach, *“providing at least one bonding layer”* as in, claim 26, or *“mating a plurality of condiment sheets together”* as in claim 24. From the stated rejection in the Office action and the reference made to Figure 5 by the Examiner, it appears that the Examiner is defining some of the wafers as bonding layers. However, the Forkner reference teaches that the wafers are wafers and nothing else. The Examiner is again redefining the literal meaning of the terms taught by the Forkner reference to imply other meanings. Again, Forkner distinguishes between **“sheet”** and **“wafer”** by forming sheets from which wafers are cut and, alternatively, forming, wafers separately. It is further noted that the claim limitations distinguish between **“bonding layer”** and **“condiment sheet.”** The Examiner is taking the teachings of the Forkner reference out of context and simultaneously defining the same element as different elements under 35 USC § 102. Accordingly, the Examiner has misrepresented and misconstrued the teachings of Forkner under 35 USC § 102 and the Examiner is requested to withdraw this rejection.

A claim is anticipated by a reference only if **each and every element as set forth in the claim** is found in the reference. For these reasons, Applicant submits that Forkner does not anticipate the claimed subject matter of claim 27. Accordingly, the Examiner is requested to withdraw this rejection.

- **Specifically regarding the rejection of claim 30:**

The rejection of claim 30 over Forkner is noted.

- **Specifically regarding the rejection of claim 36:**

Claim 36 depends from claim 23. The Examiner rejects claim 36 as being anticipated by Forkner, but does not specifically address the limitations of claim 36. Since the Examiner does not specifically state where in the reference the

limitations of claim 36 are taught, then the claim is improperly rejected and the rejection should be withdrawn and the claim allowed.

4. Claims 30, 31, and 35 have been rejected under 35 U.S.C. 102(b) as being anticipated by Bogdan, Patent No. 5,855,939.

- Specifically regarding the rejection of claim 30:

The rejection of claim 30 over Bogdan is noted.

- Specifically regarding the rejection of claim 31:

Claim 31 recites: “*wherein said mold comprises designs, indicia, or cavities for providing borders, words, or designs to the condiment structure.*”

The Examiner indicates in the rejection “the condiment slice may be formed in any suitable size and shape including comic characters, thus Bogdan teaches a mold comprising designs or cavities for providing borders or designs to the condiment structure.” In response, Applicant’s claim 31 recites that the **mold** comprises designs indicia, or cavities for providing borders, words, or designs to the condiment structure. The passage cited by the Examiner only describes the shape of the condiment may include a comic character. The Examiner states in the rejection “...thus Bogdan teaches...” This is clearly a conclusion drawn by the Examiner and the claimed limitation *is not* recited in the Bogdan reference. The passage in Bogdan does not describe that the **mold** has any designs, indicia, etc for **providing a design to the condiment**. Accordingly, claim 31 was improperly rejected under 35 USC § 102 because Bogdan does not recite the claimed limitation and does not anticipate the claim.

A claim is anticipated by a reference only if each and every element as set forth in the claim is found in the reference. For these reasons, Applicant submits that Bogdan does not anticipate the claimed subject matter of claim 31. Accordingly, the Examiner is requested to withdraw this rejection.

- Specifically regarding the rejection of claim 35:

Note that claim 35 recites: “*...depositing a predetermined quantity of condiment into an upper mold such that the condiment in the lower mold*

***compartment contacts and forms a partial face fusion with the condiment in the upper compartment.”***

Bogdan does not show or teach a mold comprising an upper compartment and a lower compartment, as required by claim 35. Note that the Bogdan mold only has one compartment in which condiment material is placed. Applicant’s claim specifically requires two compartments for the mold. Nowhere in the Bogdan reference is there disclosed a two-compartment mold. Molds 14 and 18 disclosed by Bogdan are not two-compartment molds having an upper mold section and a lower mold section. Further, claim 35 requires that the condiment material deposited in the lower mold section of the two-compartment mold form a partial face fusion with the condiment material deposited in the upper mold section of the two-compartment mold. None of the condiment structures disclosed by Bogdan have partial face fusion. Bogdan simply does not meet either of these limitations and does not anticipate the claim limitations. In fact, nowhere in the reference can the argument be made that Bogdan specifically recites and anticipates these claim limitations. In order for Bogdan to anticipate the claim, Bogdan must recite the specific limitations in the claim. Bogdan simply does not do this and claim 35 was improperly rejected under 35 USC § 102. Accordingly, Bogdan does not recite the claimed limitation and does not anticipate the claimed limitation.

A claim is anticipated by a reference only if each and every element as set forth in the claim is found in the reference. For these reasons, Applicant submits that Bogdan does not anticipate the claimed subject matter of claim 35. Accordingly, the Examiner is requested to withdraw this rejection.

5. Claims 21, 22, 30, 41, 42, and 51 have been rejected under 35 U.S.C. 102(b) as being anticipated by Alden, Patent No. 5,894,028.

• **Specifically regarding the rejection of claim 21:**

Claim 21 recites: “a) *forming condiment sheets*; b) *dividing said condiment sheets into condiment sections*; c) *joining surfaces of said condiment sections to form said condiment structure*.” Alden does not show or teach the limitations of claim 21. The Examiner does not indicate in the

rejection where Alden teaches the claimed limitations. The intention of Alden is to make pizza sauce disks – **not to form food condiment sheets, divide the food condiment sheets into sections, and then join the sections.** In fact, Alden does not disclose, teach, or suggest forming condiment sheets. Note that the claimed limitation requires that the food condiment sheets be formed as part of the process. This is an active step of forming in the claimed method.

The Examiner indicates that the Abstract teaches forming a condiment slice. It is unclear what in the Abstract the Examiner is relying on to teach, “forming a condiment slice.” The initial step in Applicant’s claimed method is *“forming condiment sheets.”* The Examiner indicates that Alden teaches forming condiment sheets (i.e. bulk supplies such as sausage logs) at column 6, lines 36-67. In response, it is noted that providing “bulk supplies” is not an active method step of forming condiment sheets. Alden simply does not meet the claim limitation of **forming condiment sheets** and claim 21 was improperly rejected under 35 USC § 102 over Alden and the rejection should be withdrawn. Accordingly, Alden does not recite the claimed limitation and does not anticipate the claimed limitation.

The second step in Applicant’s claimed method is *“dividing said condiment sheets into condiment sections.”* The Examiner indicates that Alden teaches dividing the bulk supplies and this meets the claimed limitation. In response, Alden is dividing provided “bulk supplies” – not condiment sheets formed during an initial method step as claimed by Applicant. Again, claim 21 was improperly rejected under 35 USC § 102 over Alden and should be withdrawn. Accordingly, Alden does not recite the claimed limitation and does not anticipate the claimed limitation.

The third step in Applicant’s claim 21 recites *“joining surfaces of said condiment sections to form said condiment structure.”* The Examiner indicates that this claim limitation is recited at column 6, lines 36-67 of the reference. In response, **this claim limitation cannot be found anywhere in the Alden reference.** The joining step in Applicant’s claim 21 joins together surfaces of the condiment sections divided previously from the formed condiment sheets. Alden simply does not do this and claim 21 was improperly rejected under 35 USC § 102 over Alden and should be withdrawn.

Accordingly, Alden does not recite the claimed limitation and does not anticipate the claimed limitation.

A claim is anticipated by a reference only if each and every element as set forth in the claim is found in the reference. For these reasons, Applicant submits that Alden does not anticipate the subject matter of claim 21. Accordingly, the Examiner is requested to withdraw this rejection.

- **Specifically regarding the rejection of claim 22:**

Claim 22 recites: *“a) providing individual strips and/or strands formed from at least one condiment; b) interweaving said individual strips and/or strands of said at least one condiment to form said condiment structure.”*

Alden does not show or teach the limitations of claim 22. Specifically, Alden does not teach: *“a) providing strips and/or strands formed from at least one condiment; b); interweaving said individual strips and/or strands of said at least one condiment to form said condiment structure.”* The intention of Alden is to make pizza sauce disks – not to form food condiment slices. In fact, Alden does not disclose, teach, or suggest forming condiment slices.

The initial method step in Applicant’s claim 22 is *“providing strips and/or strands formed from at least one condiment”* The Examiner indicates that *“Alden teaches that the condiment slices are formed from molds and can include several condiments that are intermingled (i.e. interweaved) by fusing together in a heating station (Column 2 line 66 through Column 3 line 17, Column 3 line 67 through Column 4 line 51, and Column 7, lines 4-12).”* In response, the Alden reference does not disclose forming condiment slices formed from molds, as indicated by the Examiner. It is also noted that the Examiner indicates that “intermingled” is equivalent or similar to “interweaving.” However, “intermingled” and “interweaving” are not the same and nowhere in the reference can either word be located. The Alden reference does not teach, “interweaving.” The Alden reference does not teach, *“interweaving individual strips and/or strands of said at least one food condiment..”* The Examiner also indicates in the rejection that *“...dividing the condiment sheets by cutting into individual strips or strands (i.e. slicing)...”* In response, *“cutting into individual strips or strands”* is not recited in the

reference as indicated by the Examiner. Further, “**slicing**” is not “**strips and/or strands**” and does not imply “strips and/or strands” are cut from “bulk supplies.” The Examiner has improperly rejected claim 22 under 35 USC § 102 over Alden by making comparisons, similarities, assumptions and drawing conclusions that are not supported by the Alden reference.

A claim is anticipated by a reference only if each and every element as set forth in the claim is found in the reference. For these reasons, Applicant submits that Alden does not anticipate the claimed subject matter of claim 22. Accordingly, the Examiner is requested to withdraw this rejection.

- **Specifically regarding the rejection of claim 30:**

Alden does not show or teach the limitations of claim 30. Specifically, Alden does not teach: “*a) providing a mold; b depositing condiment into said mold; c) molding to form said condiment structure; d) removing said condiment structure from said mold.*” The intention of Alden is to make pizza sauce disks – not to form food condiment slices. In fact, Alden does not disclose, teach, or suggest forming condiment slices. Alden fails to teach any of the steps of claim 30.

The Examiner has improperly rejected claim 30 under 35 USC § 102 over Alden by making comparisons, similarities, assumptions and drawing conclusions that are not supported by the Alden reference.

A claim is anticipated by a reference only if each and every element as set forth in the claim is found in the reference. For these reasons, Applicant submits that Alden does not anticipate the claimed subject matter of claim 30. Accordingly, the Examiner is requested to withdraw this rejection.

- **Specifically regarding the rejection of claim 41:**

Claim 22, from which claim 41 depends, recites: “*a) providing individual strips and/or strands formed from at least one condiment; b) interweaving said individual strips and/or strands of said at least one condiment to form said condiment structure.*” The Alden reference does not teach the claim limitations of claim 22 as recited above.

Claim 41, which depends from claim 22, recites: *“wherein said step of providing individual strips and/or strands formed from at least one condiment comprises cutting said strips and/or strands from at least one condiment sheet.”*

The Examiner indicates that Alden teaches dividing the “bulk supplies” and this meets the limitation of claim 41. The Examiner indicates that Alden teaches forming condiment sheets (i.e. bulk supplies such as sausage logs) at column 6, lines 36-67.

In response, it is noted that the provided “bulk supplies” to which the Examiner refers is not a method step of forming condiment sheets. Alden is dividing provided bulk supplies – not condiment sheets, as claimed. Further, the Alden reference does not teach the method step of *“interweaving individual strips and/or strands”* or *“cutting into individual strips and/or strands”* as presented in claim 22. Accordingly, *“cutting into individual strips or strands”* is not recited in the reference as indicated by the Examiner. Further, “slicing” is not **“strips and/or strands”** and does not imply “strips and/or strands” are cut from “bulk supplies.” Claim 41 was improperly rejected under 35 USC § 102 over Alden and should be withdrawn. Accordingly, Alden does not recite the claimed limitation and does not anticipate the claimed limitation.

A claim is anticipated by a reference only if each and every element as set forth in the claim is found in the reference. For these reasons, Applicant submits that Alden does not anticipate the claimed subject matter of claim 22. Accordingly, the Examiner is requested to withdraw this rejection.

• **Specifically regarding the rejection of claim 42:**

The Examiner has failed to properly address why claim 42 is rejected over Alden. Nowhere in the rejection is there a discussion describing the conclusions of the Examiner with respect to claim 42. Accordingly, the Office action is incomplete and a new non-final Office action addressing all of the claim limitations of claim 42 is hereby requested.

However, with respect to claim 42, Applicant submits that Alden does not teach interweaving strips and/or strands of food condiment at any desired angle

and pattern. A claim is anticipated by a reference only if each and every element as set forth in the claim is found in the reference.

- **Specifically regarding the rejection of claim 51:**

Claim 51, which depends from claims 41 and 22, further defined *“the at least one condiment sheet”* of claim 41. However, the condiment sheets recited in Applicant’s claim 51 are not disclosed in the Alden reference.

In response, it is noted that *“bulk supplies”* is not a method step for forming condiment sheets. Alden is dividing provided bulk supplies – not condiment sheets, as claimed. Claim 51 was improperly rejected under 35 USC § 102 over Alden and should be withdrawn. Accordingly, Alden does not recite the claimed limitation and does not anticipate the claimed limitation.

A claim is anticipated by a reference only if each and every element as set forth in the claim is found in the reference. For these reasons, Applicant submits that Alden does not anticipate the claimed subject matter of claim 51. Accordingly, the Examiner is requested to withdraw this rejection.

6. Claims 28, 29, 32-34, and 36 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Durst, Patent No. 3,615,597.

- **Specifically regarding the rejection of claim 28:**

Claim 23, from which claim 28 depends, recites: *“a) providing at least one condiment sheet; b) dividing said at least one condiment sheet to form individual condiment slices.”* It is noted that Durst does not meet the limitations of claim 23, as discussed above.

Claim 28 recites: *“wherein said dividing step comprises performing single successive cuts on said at least one condiment sheet to form each of said condiment slices.”*

The Examiner has rejected claim 28 as being *“...obvious to form a condiment slice by cutting a condiment structure into strips first and then cutting the condiment strips into individual condiment slices through successive cutting operations.”* The claim, however, is not drawn to forming *“strips”* and then cutting *“slices”* from the *“strips”* as the Examiner has proposed. Claim 28

requires that single, successive cuts be performed on a sheet to form each condiment slice.

The Examiner asserts the following obvious statement: “...it would be obvious...to form a condiment slice through a single cutting operation depending on the desired size of the final condiment slice and the original size of the condiment structure.” What original size or shape of condiment structure would motivate Durst to use a single cutting operation to form a plurality of food condiment slices? What desired size of the final condiment slice would motivate Durst to use a single cutting operation to form a plurality of food condiment slices? Since Durst does not disclose the size of the sheets from which the final condiments are formed, then merely dismissing the claim as a function of the size of the sheet is improper. There must be motivation for Durst to divide the sheet as Applicant claims. The Examiner also states in the rejection “...it would be within the ordinary ingenuity and common sense of one of ordinary skill in the art to cut a condiment structure to form a condiment slice in one cutting operation or multiple cutting operations depending on the desired final size of the condiment slice...” It is unclear to Applicant why the desired final size of the condiment slice would influence the cutting operation. What desired final sizes of food condiment slice would motivate Durst to choose either a single cutting operation or multiple cutting operations?

The cutting operation disclosed by Durst does not meet the limitations of claim 28. The Durst reference does not disclose or suggest that the cutting step can be performed using single successive cuts. Further, the sheet formed by Durst from the admixture is not divided as required by the claim. That is, Durst does not teach that the sheets formed are further divided. The Examiner is hereby requested to provide a reference that supports the well-known and obvious statements or withdraw the rejection.

- **Specifically regarding the rejection of claim 29:**

Claim 29 recites: “*wherein said dividing step comprises forming a plurality of said condiment slices simultaneously with a single cutting operation.*”

The Examiner has rejected claim 29 as being “obvious...to form a condiment slice through a single cutting operation...”

In response, claim 29 is forming a plurality of condiment slices using a single cutting operation. Nowhere does the Durst reference disclose or suggest a cutting operation that divides a food condiment sheet into a **plurality of food condiment slices simultaneously using a single cutting operation**. The cutting operation disclosed by Durst does not meet the limitations of claim 29.

The Examiner asserts the following obvious statement: “...it would be obvious...to form a condiment slice through a single cutting operation depending on the desired size of the final condiment slice and the original size of the condiment structure.” What **original size or shape of condiment structure** would motivate Durst to use a single cutting operation to form a plurality of food condiment slices? What **desired size** of the final condiment slice would motivate Durst to use a single cutting operation to form a plurality of food condiment slices? Since Durst does not disclose the size of the sheets from which the final condiments are formed, then merely dismissing the claim as a function of the size of the sheet is improper. There must be motivation for Durst to divide the sheet as Applicant claims. The Examiner also states in the rejection “...it would be within the ordinary ingenuity and common sense of one of ordinary skill in the art to cut a condiment structure to form a condiment slice in one cutting operation or multiple cutting operations depending on the desired final size of the condiment slice...” It is unclear to Applicant why the **desired final size of the condiment slice** would influence the cutting operation. What **desired final sizes of food condiment slice** would motivate Durst to choose either a single cutting operation or multiple cutting operations?

The Durst reference simply does not disclose or suggest that a plurality of condiment slices is formed simultaneously using a single cutting operation. The Examiner is hereby requested to provide a reference that supports the obvious statements or withdraw the rejection.

- Specifically regarding the rejections of claims 32 and 33:

Claim 32 recites: “*wherein said dividing step comprises forming a plurality of individual condiment strip sheets from said at least one condiment sheet prior to forming said condiment slices.*”

Claim 33 recites: “*wherein said dividing step further comprises forming said condiment slices from said plurality of condiment strip sheets.*”

The Examiner states in the rejection “...it would be obvious...to form a condiment slice by cutting a condiment structure into strips first and then cutting the condiment strips into individual condiment slices through successive cutting operations...depending on the desired size of the final condiment slice and the original size of the condiment structure.” At column 3, lines 26-30, cited by the Examiner, Durst teaches, “the condiments of the present invention can be cubes, sheets, bars, rods, etc.” He further teaches at Column 3, lines 49-56 that “the admixture was frozen and sliced into sheets...” Durst never discusses dividing these sheets into food condiment slices – as required by Applicant’s claim 23, from which claims 32 and 33 depend. The teachings of Durst do not support such a cutting operation, as claimed by Applicant. What original size of condiment structure would motivate Durst to cut a condiment structure into strip sheets first and then cut the strip sheets into individual condiment slices? What desired size of the final condiment slice would motivate Durst to use successive cutting operations to form a plurality of food condiment slices? Since Durst does not disclose the size of the sheets from which the final condiments are formed, then merely dismissing the claim as a function of the size of the sheet is improper. Further, the Durst method does not teach or support large-scale continuous operations. There must be motivation for Durst to divide the sheet as Applicant claims. The Examiner also states in the rejection “...it would be within the ordinary ingenuity and common sense of one of ordinary skill in the art to cut a condiment structure to form a condiment slice in one cutting operation or multiple cutting operations depending on the desired final size of the condiment slice...” It is unclear to Applicant why the desired final size of the condiment slice would influence the cutting operation. What desired final sizes of food condiment slice would motivate Durst to choose either a single cutting operation or multiple cutting operations?

The Durst reference simply does not disclose or suggest forming strip sheets from a condiment sheet prior to forming condiment slices. The Examiner is hereby requested to provide a reference that supports the well-known and obvious statements or withdraw the rejection.

- **Specifically regarding the rejection of claim 34:**

Claim 34 recites: *“wherein said dividing step is performed using a cutting tool comprising at least one cutting blade and at least one shaping surface.”*

The Examiner states in the rejection *“...it would have been obvious...to use a blade on cutting the condiment structure...and further obvious...to include a shaping surface while cutting the condiment structure in order to aid in forming the correct size and shape of the final condiment slice.”* The Examiner also states *“...it would have been obvious...to use a cutting blade in cutting the condiment structure since a blade was a well known readily available cutting device and Durst does not teach of a specific cutting device for cutting the condiment structure.”*

In response, nowhere in the Durst reference is it disclosed or suggested to use a cutting tool having at least one cutting blade and at least one shaping surface to perform the dividing step. Durst also teaches at Column 3, lines 49-56 that *“the admixture was frozen and sliced into sheets...”* Why would the Examiner state that it is obvious to use a cutting tool having a shaping surface to cut the frozen admixture described by Durst? There is no motivation or reason to provide a cutting tool that would provide a shape to the frozen condiment because Durst teaches it is formed in a mold and therefore has the shape of the mold. The Examiner indicates in the rejection that Durst *“is silent to the specific cutting details”* It is unclear to Applicant how obvious conclusions can be drawn from a reference that is *silent on details* and provides no motivation for modification. Applicant’s method for dividing the food condiment uses a specific cutting tool for performing the operation. Also, at column 3, lines 26-30, cited by the Examiner, Durst teaches, *“the condiments of the present invention can be cubes, sheets, bars, rods, etc.”* He further teaches at Column 3, lines 49-56 that *“the admixture was frozen and sliced into sheets...”* Durst

never discusses dividing these sheets into food condiment slices – as required by Applicant’s claim 23, from which claim 34 depends. The teachings of Durst do not support such a cutting operation or cutting tool, as claimed by Applicant.

The Durst reference simply does not disclose or suggest using a cutting tool comprising at least one cutting blade and at least one shaping surface. The Examiner is hereby requested to provide a reference that supports the well-known and obvious statements or withdraw the rejection.

- **Specifically regarding the rejection of claim 36:**

The Examiner rejects claim 36 as obvious over Durst, but does not specifically address the limitations of claim 36. Claim 36 was rejected under 35 USC § 102 as being anticipated by Durst. It is unclear and confusing to Applicant how the Examiner is interpreting the Durst reference with respect to claim 36. Since the Examiner does not specifically state a reason for rejection, or address the differences between claim 36 and the Durst reference, or provide an obvious statement, then the claim is improperly rejected and should be withdrawn.

**7. Claims 38, 39, 46-50, and 52-56 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Forkner, Patent No. 4,068,007.**

- **Specifically regarding the rejection of claim 38:**

The Examiner states in the rejection of claim 38 “...Forkner, however, is silent to the method of producing the condiment strips as continuous as recited in claim 38...” The Examiner further states, “...continuous processing and batch processing are well known concepts in the art. It would have been obvious...to have the batch process as taught by Forkner continuous in order to increase efficiency of the process.” In response, nowhere in the Forkner reference is it disclosed or suggested to use a continuous process. Additionally, continuous processing is not an automatic alternative to batch processing, as the Examiner asserts. Further, the Examiner has not described how Forkner, using a continuous process, meets the limitations of claim 38. The Examiner merely

makes a blanket well-known/obvious statement to reject the claim without any explanation.

Regarding step *“a) feeding continuous condiment sheets from continuous molding processes to a dividing station;”* Forkner does not teach a continuous process. Forkner does not teach continuous condiment sheets from continuous molding processes – note that there is more than one continuous condiment sheet and more than one continuous molding process for forming continuous condiment sheets.

Regarding step *“b) dividing said continuous condiment sheets into continuous strips;”* Forkner does not teach dividing continuous condiment sheets formed from continuous molding processes into continuous condiment strips. Forkner does not teach continuous condiment strips.

Regarding step *“c) mating said continuous condiment strips;”* Forkner does not teach mating continuous condiment strips. Note that these condiment strips are continuous and non-broken.

Regarding step *“d) feeding said mated condiment strips to a heating/fusion device;”* Forkner does not teach feeding mated condiment strips to a heating/fusion device.

Regarding step *“e) heating the mating surfaces of said continuous condiment strips to flow point;”* Forkner does not teach heating mating surfaces of continuous condiment strips to the flow point of the condiment material within the heating/fusion device.

Regarding step *“f) abutting the heated mating surfaces of the continuous condiment strips to cause fusion of the surfaces and form a continuous fused combination condiment sheet;”* Forkner does not teach abutting heated mating surfaces of continuous condiment strips to cause fusion of the abutted surfaces and thereby form a continuous fused combination condiment sheet.

Regarding step *“g) dividing said continuous fused combination condiment strip sheet to form condiment slices.”* Forkner does not teach dividing the continuous fused combination condiment sheet to form condiment slices.

The Forkner reference simply does not disclose or suggest using a continuous process comprising the above claimed method steps. The Examiner

is hereby requested to provide a reference that supports the well-known and obvious statement or withdraw the rejection.

- **Specifically regarding the rejection of claim 39:**

The Examiner has failed to properly address why claim 39 is rejected over Forkner. Nowhere in the rejection is there a discussion or obvious statement describing the conclusions of the Examiner with respect to claim 39. Accordingly, the Office Action is incomplete and a new non-final Office action addressing all of the claim limitations is hereby requested.

However, with respect to claim 39, Applicant submits that Forkner does not teach 1) a continuous process, 2) a method step of mating continuous condiment strips in a face-to-face or side-by-side relationship.

- **Specifically regarding the rejection of claim 46:**

Claim 46 recites: ***“a) providing a cutting tool; b) forming a condiment slice from at least one condiment sheet using said cutting tool; c) removing the condiment slice from said at least one condiment sheet using said cutting tool; d) mating the cutting tool with a mold section; e) positioning said condiment slice in said mold section; f) heating the periphery of said condiment slice.”***

The Examiner states in the rejection of claim 46 *“...Forkner, however, is silent to... mating the cutting tool with the mold section as recited in claim 46...”* The Examiner further states, *“Regarding mating the cutting tool with the mold section as recited in claim 46...it was well known in the art...for cutting or slice tools to be combined with molding apparatus, including those utilized with edible extruded materials.”* In response, the Forkner reference does not disclose or suggest the method step of, ***“removing the condiment slice from said at least one condiment sheet using said cutting tool;”*** The limitation requires that the cutting tool used to cut the condiment sheet to form a condiment slice also removes the condiment slice from the condiment sheet following cutting.

Also, the Forkner reference does not disclose or suggest the method step of ***“mating the cutting tool with a mold section;”*** This limitation requires that

the cutting tool used to cut, remove, and carry the cut condiment slice from the condiment sheet be mated with a mold section. Forkner does not teach the claimed method of mating a cutting tool, which is carrying a condiment slice, with a mold section. Forkner only teaches forming a wafer in mold 10 (see Figure 1 and column 3, lines 37-49). Further, it **would not** have been obvious to use a cutting tool in conjunction with the mold of Figure 1 of Forkner, because Forkner specifically teaches, *“The mold cavity is shown filled with pieces 12 of the expandable material...”* Accordingly, there is no motivation to use a cutting tool in conjunction with a mold because there is no condiment sheet from which to cut a condiment slice. Forkner also teaches in an alternative method, *“a sheet can be formed...and wafers can be cut from such a sheet.”* Accordingly, there is no motivation in this passage to use the mold to form the wafers, as in Figure 1, because the wafers are cut from the sheet – no mold is necessary. Accordingly, it **would not** have been obvious to modify any of the methods disclosed by Forkner to include using a cutting tool to remove a condiment slice from a condiment sheet and mating the cutting tool with a mold section because the methods of Forkner do not support such modification and would be meaningless, as described above.

The Examiner is hereby requested to provide a reference that supports the well-known and obvious statements or withdraw the rejection.

• **Specifically regarding the rejection of claim 47:**

The Examiner has failed to properly address why claim 47 is rejected over Forkner. Nowhere in the rejection is there a discussion or obvious statement describing the conclusions of the Examiner with respect to claim 47. Accordingly, the Office action is incomplete and a new non-final Office action addressing all of the claim limitations of claim 47 is hereby requested.

However, with respect to claim 47, Applicant submits that Forkner does not teach a cutting tool provided with a vacuum to attach, hold, and carry a condiment slice.

- Specifically regarding the rejection of claim 48:

Claim 48 recites: “*wherein said cutting tool and said mold section are provided with heating/cooling plates for performing said heating of said periphery of said condiment slice.*”

The Examiner states in the rejection of claim 48 “*...Forkner, however, is silent to the cutting tool and mold section as provided with heating plates for heating the condiment slices as recited in claim 48.*” The Examiner further states, “*Forkner teaches of molding, cutting, and fusing together condiment slices. It would have been obvious...to use a mold and/or cutting device with heating plates to fuse the material inside into one piece, in order to combine the step of fusing into one step with molding and cutting, thus increasing the efficiency of the process.*” In response, the Forkner reference does not disclose or suggest the method step of: *a cutting tool and a mold section are provided with heating/cooling plates for performing the heating of the periphery of the cut condiment slice.* The limitations of claim 48 must be read in combination with the limitations of claim 46, from which claim 48 depends. First Forkner does not teach the limitations of claim 46, which requires cutting a food condiment slice from a food condiment sheet and mating the cutting tool and a mold section. Claim 48 further limits claim 46 by requiring that both the cutting tool and mold section be provided with heating/cooling plates for performing the heating step of the periphery of the food condiment slice. Forkner does not teach these limitations and does not provide the tools to perform the method. The Examiner has simply dismissed the claim limitations as obvious.

Further, it **would not** have been obvious to use a cutting tool having heating/cooling plates in conjunction with the mold of Figure 1 because Forkner specifically teaches, “*The mold cavity is shown filled with pieces 12 of the expandable material...*” Accordingly, there is no motivation to use a cutting tool in conjunction with the mold shown by Forkner because there is no condiment sheet from which to cut a condiment slice. In Forkner, a preformed expandable material is formed in the mold, removed from the mold, and further processed for expansion. Applicant’s claim limitations require mating of a cutting tool and mold section – each having heating/cooling plates for heating the periphery of the condiment slice. Note that Applicant’s claim requires that

the condiment slice be formed prior to placement in the mold. Forkner also teaches an alternative method, “*a sheet can be formed...and wafers can be cut from such a sheet.*” Accordingly, there is no motivation to use the mold to form the wafers, as in Figure 1, because the wafers are cut from the sheet – no mold is necessary. Accordingly, it *would not* have been obvious to modify any of the methods disclosed by Forkner to include using a cutting tool having heating/cooling plates to remove a condiment slice from a condiment sheet and mating the cutting tool having heating/cooling plates with a mold section having heating/cooling plates because the methods of Forkner do not support such modification and would be meaningless, as described above. The Examiner is requested to provide a reference that supports the well-known and obvious statements or withdraw this rejection.

- **Specifically regarding the rejection of claim 49:**

The Examiner has failed to properly address why claim 49 is rejected over Forkner. Nowhere in the rejection is there a discussion or obvious statement describing the conclusions of the Examiner with respect to claim 49. Accordingly, the Office action is incomplete and a new non-final Office action addressing all of the claim limitations of claim 49 is hereby requested.

However, with respect to claim 49, Applicant submits that Forkner does not teach a condiment slice that has a plurality of layers. Nowhere in the Forkner reference is this limitation disclosed.

- **Specifically regarding the rejection of claim 50:**

The Examiner has failed to properly address why claim 50 is rejected over Forkner. Nowhere in the rejection is there a discussion or obvious statement describing the conclusions of the Examiner with respect to claim 50. Accordingly, the Office action is incomplete and a new non-final Office action addressing all of the claim limitations of claim 50 is hereby requested.

The limitations of claim 50 must be read in combination with the limitations of claim 46, from which claim 50 depends. Forkner does not teach the limitations of claim 46, which requires cutting a food condiment slice from a food condiment sheet and mating the cutting tool and a mold section. The

condiment slice is cut from at least one condiment sheet, as recited in claim 50. The Examiner is requested to withdraw this rejection.

- **Specifically regarding the rejection of claim 52:**

Claim 52 recites: “*wherein said condiment is in the form of condiment pieces and said depositing step comprises providing a hopper/ejection apparatus for depositing said condiment pieces into said mold.*”

The Examiner states in the rejection of claim 52 “...Forkner, however, is silent to a hopper/ejection apparatus for depositing condiment pieces into the mold as recited in claim 52.” The Examiner further states, “The use of injection nozzle for filling was known in the art; this was commonly done in injecting filling into donut, injecting confection into mold etc.” In response, Applicant is not injecting filling into donuts or confection into molds. The Examiner never states why it would have been obvious to use a hopper/ejection apparatus. Nowhere in the rejection is there a discussion or obvious statement describing the conclusions of the Examiner with respect to claim 52 and the use of a hopper. Accordingly, the Office Action is incomplete and a new non-final Office action addressing all of the claim limitations is hereby requested.

However, with respect to the rejection of claim 52, the hopper/ejection apparatus is for depositing condiment pieces into a mold. The food condiment pieces are ejected into the mold through a hopper/ejection apparatus and then molded to form a food condiment structure. The Forkner reference does not do, suggest, or teach this limitation.

Additionally, the Forkner reference does not use, suggest, or lend itself to teachings for using a hopper/ejection nozzle apparatus. Further, Forkner does not disclose a large scale or continuous operations that would benefit from the inclusion of a hopper/ejection apparatus. It would *not have* been obvious to modify Forkner because the teachings of Forkner do not lend the methods of Forkner to the use of a hopper/ejection nozzle apparatus.

It is also noted that Claim 52 further limits claim 30 and must be read in combination with independent claim 30.

The Forkner reference simply does not disclose or suggest using a hopper/ejection apparatus for depositing condiment pieces into a mold. The

Examiner is hereby requested to provide a reference that supports the well-known and obvious statements or withdraw the rejection.

- Specifically regarding the rejection of claim 53:

Claim 53 recites: “*wherein said hopper/ejection apparatus comprises an ejection nozzle that spans the width or length of the mold and deposits said condiment pieces as said mold is conveyed beneath said ejection nozzle.*”

The Examiner states in the rejection of claim 53 “...Forkner, however, is silent to a hopper/ejection apparatus for depositing condiment pieces into the mold as recited in claim 53.” The Examiner further states, “It would have been further obvious...to use an ejection nozzle that spanned the length of width of the mold in order for the mold to be filled completely in one pass of the ejection nozzle. The selection of an appropriate nozzle configuration to carry out the injection is a result effective variable that is well within the determination of one skilled in the art. It would have been obvious to select nozzle that would give the most optimum filling and optimization is within the skill of one in the art.”

In response, the Forkner reference does not use, suggest, or lend itself to teachings for using a hopper/ejection nozzle apparatus. Further, Forkner does not disclose a large scale or continuous operations that would benefit from the inclusion of a hopper/ejection apparatus. It would *not have* been obvious to modify Forkner because the teachings of Forkner do not lend the methods of Forkner to the use of a hopper/ejection nozzle apparatus. The Examiner has simply dismissed the claim limitation as obvious.

Additionally, the Examiner has failed to address the claim limitation of “*...said mold is conveyed beneath said ejection nozzle.*” Nowhere in the rejection is there a discussion or obvious statement describing the conclusions of the Examiner with respect to this limitation in claim 53. Accordingly, the Office Action is incomplete and a new non-final Office action addressing all of the claim limitations is hereby requested. Otherwise, it is believed that the claim limitation is allowable.

With respect to claim 53 and the limitation of *said mold is conveyed beneath said ejection nozzle*, Applicant submits that Forkner does not disclose a

large scale or continuous operations that would benefit from the inclusion of a mold conveying operation.

The Forkner reference simply does not disclose or suggest using a hopper/ejection apparatus for ejection nozzle that spans the width or length of the mold and deposits said condiment pieces as said mold is conveyed beneath said ejection nozzle. The Examiner is hereby requested to provide a reference that supports the well-known and obvious statements or withdraw the rejection.

• **Specifically regarding the rejection of claim 54:**

Claim 54 recites: *“wherein said hopper/ejection apparatus comprises a laterally moving ejection nozzle that deposits said condiment pieces into said mold using a full length or full width distribution as said mold is conveyed beneath said ejection nozzle.”*

The Examiner states in the rejection of claim 54 *“...Forkner, however, is silent to...the hopper/ejection apparatus comprises a laterally moving ejection nozzle which has full length or width mold distribution as recited in claim 54.”*

The Examiner further states, *“It would have been further obvious...to use an ejection nozzle that moved laterally to deposit edible materials in the molds in the process as taught by Forkner in order to automate the process, thus increasing the operational efficiency...The selection of an appropriate nozzle configuration to carry out the injection is a result effective variable that is well within the determination of one skilled in the art. It would have been obvious to select nozzle that would give the most optimum filling and optimization is within the skill of one in the art.”*

In response, the Forkner reference does not use, suggest, or lend itself to teachings for using a hopper/ejection nozzle apparatus or a laterally moving nozzle. Further, Forkner does not disclose a large scale or continuous operations that would benefit from the inclusion of a hopper/ejection apparatus. It would **not have** been obvious to modify Forkner because the teachings of Forkner do not lend the methods of Forkner to the use of a hopper/ejection nozzle apparatus using a laterally moving nozzle. The Examiner has simply dismissed the claim limitations as obvious.

Additionally, the Examiner has failed to address the claim limitation of “...*said mold is conveyed beneath said ejection nozzle.*” Nowhere in the rejection is there a discussion or obvious statement describing the conclusions of the Examiner with respect to this limitation in claim 54. Accordingly, the Office Action is incomplete and a new non-final Office action addressing all of the claim limitations is hereby requested. Otherwise, it is believed that the claim limitation is allowable.

With respect to claim 54 and the limitation of *said mold is conveyed beneath said ejection nozzle*, Applicant submits that Forkner does not disclose a large scale or continuous operations that would benefit from the inclusion of a mold conveying operation.

The Forkner reference simply does not disclose or suggest using a hopper/ejection apparatus with a laterally moving ejection nozzle that deposits said condiment pieces into said mold using a full length or full width distribution as said mold is conveyed beneath said ejection nozzle. The Examiner is hereby requested to provide a reference that supports the well-known and obvious statements or withdraw the rejection.

• *Specifically regarding the rejection of claim 55:*

Claim 55 recites: “*wherein said condiment pieces are formed from a single condiment sheet, a face-fused condiment sheet, a side-fused condiment sheet, a face-fused-side-fused condiment sheet, a chopped condiment sheet, a woven condiment sheet, and combinations thereof.*”

The limitations of claim 55 must be read in combination with the limitations of claims 30 and 52, from which claim 55 depends. Forkner does not teach the limitations of claim 52, which requires a **hopper/ejection apparatus**. Nowhere in the rejection is there a discussion or obvious statement describing the conclusions of the Examiner with respect to claim 52 and the use of a **hopper**. Accordingly, the Office Action is incomplete and a new non-final Office action addressing all of the limitations of claim 55, which depends from claims 30 and 52, is hereby requested. Since the rejection under 35 USC 103 for claim 55 has not been met as discussed above, the Examiner is requested to withdraw this rejection.

- Specifically regarding the rejection of claim 56:

Claim 56 recites: “*wherein said condiment pieces are formed from extruded condiment that is divided into said condiment pieces and fed to said hopper/ejection apparatus.*”

The Examiner states in the rejection of claim 56 “...Forkner, however, is silent to the extruded material as placed in a cutting or slice forming mold as recited in claim 56.” The Examiner further states, “Forkner teaches that condiment strips may be formed by extruding and then cutting the extruded condiment strips to form the desired size. It would have been obvious...to include a mold with the cutting device in order to assist in easily forming or cutting the extruded condiment piece to the desired size” In response, first there is no limitation drawn to placing extruded material into a cutting or slice forming mold, as eluded to by the Examiner in the rejection. The claim requires that “**extruded condiment is divided into condiment pieces and fed to said hopper/ejection apparatus.**” Second, the Examiner states that Forkner is silent to the extruded material and then states Forkner teaches condiment strips may be formed by extruding. It is unclear as to where the Examiner stands with regard to Forkner teaching or not teaching extruding. The fact is that the Forkner reference fails to disclose, teach, or suggest extruding. Nowhere in the reference is the word extruding even mentioned. Applicant’s claim 56 recites *wherein said condiment pieces are formed from extruded condiment that is divided into said condiment pieces and fed to said hopper/ejection apparatus.* The Examiner has simply dismissed the claim limitation as obvious.

Also, the Forkner reference fails to teach a hopper/ejection apparatus. In response, the Forkner reference does not use, suggest, or lend itself to teachings for using a hopper/ejection nozzle apparatus. Further, Forkner does not disclose a large scale or continuous operations that would benefit from the inclusion of a hopper/ejection apparatus. It would **not have** been obvious to modify Forkner because the teachings of Forkner do not lend the methods of Forkner to the use of a hopper/ejection nozzle apparatus. Also, the rejection did not provide a discussion or obvious statement describing the conclusions of the Examiner with respect to claim 52 and the use of a **hopper**. Accordingly, the Office

Action is incomplete and a new non-final Office action addressing all of the limitations of claim 52 is hereby requested.

There is no teaching of extrusion or of extruded condiment that is divided into condiment pieces and fed to the hopper/ejection apparatus. The hopper/ejection apparatus deposits the **condiment pieces** into a mold. The food condiment pieces are ejected into the mold by way of the hopper/ejection apparatus and then molded to form a food condiment structure. The Forkner reference does not suggest or teach these limitations. The Examiner has misrepresented and misconstrued the teachings of Forkner under 35 USC § 103 and is hereby requested to provide a reference that supports the well-known statement and obvious statements or withdraw this rejection.

**8. Claim 47 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Forkner, Patent No. 4,068,007 in view of Jordan 3,848,757.**

• **Specifically regarding the rejection of claim 47:**

Claim 47 recites: *“wherein said cutting tool is provided with vacuum to attach, hold, and carry the condiment slice.”*

The Examiner rejects claim 47 as being obvious over Forkner in view of Jordan by stating *“Forkner...is silent to the cutting tool as provided with a vacuum attachment for moving the condiment slice as recited in claim 47”* The Examiner also states *“Jordan teaches of an automated process of flexible sheets of material, such as cheese slices, in which the sheet is moved and sorted with a vacuum attachment...”* The Examiner also states *“It would have been obvious...to include a vacuum attachment on the cutting tool in the process as taught by Forkner so that the cut structure could be moved in an automated manner after being cut...”* In response, what Jordan actually teaches attaching food slices to a vacuum conveyor for the purpose of feeding the slices to a stacking surface for packaging. The method described by Jordan at Column 1, lines 14-26 *“forming stacks of flexible food slices comprising feeding a series of flexible food slices in turn to the underside of a moving air permeable conveyor, attaching each slice...to the underside of the conveyor by vacuum, conveying to a position over a stacking support, stopping said conveyor...releasing the vacuum and...said slice to...form a stack...”* Accordingly, Jordan does not feed

food slices to a molding operation, not rather, to a stacking and packaging operation. At column 1, lines 39-42, Jordan discloses, "...each slice is weighed before being attached to the conveyor..." Accordingly, there is a weighing operation for the slices prior to the slices being attached to the conveyor. At Column 3, lines 65-67, Jordan discloses "The slices 40 fall from a cutting operation...on to a weighing conveyor comprising a conveyor belt 2..." Accordingly, the cutting operation in Jordan occurs prior to any of the operations described in the inventive process of Jordan. That is, there is no association or teaching of a cutting tool having a vacuum. It is also noted that the vacuum conveyor is not positioned with or even directly after the cutting of the food slices in Jordan. That is, after the cutting operation in Jordan, the food slices fall onto a weighing conveyor. Further, the vacuum conveyor in Jordan is not a cutting tool. Additionally, neither Jordan nor Forkner teaches, **"removing the condiment slice from said at least one condiment sheet using said cutting tool;"** as recited in claim 46, from which claim 47 depends. The combination of claim 46 and 47 require the cutting tool to be equipped with a vacuum to perform the functions of attaching, holding, and carrying the condiment slice following the cutting step. The combination of Forkner and Jordan simply do not teach this limitation. Additionally, the combination of claims 46 and 47 require the cutting tool that is carrying the condiment slice mate with a mold section. The combination of Forkner and Jordan simply do not teach this limitation. Next, the combination of claims 46 and 47 require that the condiment slice being held and carried by vacuum be positioned in the mold section that is mated with the cutting tool. The combination of Forkner and Jordan simply do not teach this limitation. Further, the combination of claims 46 and 47 require that the periphery of the condiment slice be heated. The combination of Forkner and Jordan simply do not teach this limitation.

The Examiner has misrepresented and misconstrued the teachings of Forkner in view of Jordan under 35 USC § 103 and is hereby requested to provide a reference that supports the well-known statement and obvious statements or withdraw this rejection.

9. **Claims 52-55 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Bogdan, Patent No. 5,855,939.**

- **Specifically regarding the rejection of claim 52:**

Claim 52 recites: ***“wherein said condiment is in the form of condiment pieces and said depositing step comprises providing a hopper/ejection apparatus for depositing said condiment pieces into said mold.”***

The Examiner rejects claim 52 as being obvious over Bogdan by stating ***“...the use of injection nozzle for filling was known in the art; this is commonly done in injection filling into donut, injecting confection into mold etc...”*** In response, Applicant is not injecting filling into donuts or confection into molds.

Nowhere does the Examiner address the limitation of claim 52 that the food condiment ***“is in the form of condiment pieces and said depositing step comprises providing a hopper/ejection apparatus for depositing said condiment pieces into said mold.”*** Applicant’s hopper/ejection apparatus is for depositing **condiment pieces** into a mold. The food condiment pieces are then molded to form a food condiment structure. The Bogdan reference does not do, suggest, or teach this limitation. Bogdan does not teach ejecting food condiment pieces into a mold and molding the food condiment pieces to form a food condiment structure. It is also noted that Claim 52 further limits claim 30 and must be read in combination with independent claim 30. The Examiner simply dismisses the limitations as well known and obvious.

The Examiner also states ***“The selection of an appropriate nozzle configuration to carry out the injection is a result effective variable that is well within the determination of one skilled in the art. It would have been obvious to select nozzle that would give the most optimum filling and optimization is within the skill of one in the art.”*** In response, the Bogdan reference does not use, suggest, or lend its teachings to the use of a hopper/ejection nozzle apparatus. Bogdan does not disclose large scale or continuous operations. Bogdan teaches a preferred apparatus and method at column 4, lines 21-29, which includes a first mold and second mold. Bogdan states, ***“Molten jelly is poured into the first mold...”*** Molten jelly does not constitute depositing food condiment pieces into a mold or use of a hopper/ejection apparatus. Bogdan refers to **pouring** as the method of deposition into a mold. It **would not** have been obvious to

modify Bogdan because the teachings of Bogdan do not lend Bogdan to the use of condiment pieces or to the use of a hopper/ejection nozzle apparatus. Bogdan simply **pours** onto a mold. There is no need for a hopper/ejection nozzle apparatus. The Examiner cannot read limitations into a reference in order to reject a claim. Bogdan liquefies material prior to pouring into a mold. Injecting pieces of food condiment into the molds of Bogdan would require Bogdan to then liquefy the food condiment pieces. This is not taught or suggested by Bogdan and suggesting this destroys the teachings and method of the Bogdan reference. The Examiner is requested to withdraw this rejection.

The rejection does not meet the requirement of 35 USC 103 because the subject matter in the claims has not been shown to be obvious. Merely dismissing the claim limitations as well known and obvious is not sufficient reasoning. The Examiner is hereby requested to provide support for the well-known and obvious statements or withdraw the rejection.

• **Specifically regarding the rejection of claim 53:**

Claim 53 recites: *“wherein said hopper/ejection apparatus comprises an ejection nozzle that spans the width or length of the mold and deposits said condiment pieces as said mold is conveyed beneath said ejection nozzle.”*

The Examiner rejects claim 53 as being obvious over Bogdan by stating *“The selection of an appropriate nozzle configuration to carry out the injection is a result effective variable that is well within the determination of one skilled in the art. It would have been obvious to select nozzle that would give the most optimum filling and optimization is within the skill of one in the art.”* In response, the Bogdan reference does not use, suggest, or lend itself to teachings for using a hopper/ejection nozzle apparatus. Further, Bogdan does not disclose large scale or continuous operations that would benefit from the inclusion of a hopper/ejection apparatus. Bogdan teaches a preferred apparatus and method at column 4, lines 21-29, which includes a first mold and second mold. Bogdan states, *“Molten jelly is poured into the first mold...”* Molten jelly does not constitute depositing food condiment pieces into a mold or the use of a hopper/ejection apparatus. Bogdan refers to pouring as the method of deposition into a mold. Additionally, **“pouring”** does not constitute a

**“hopper/ejection apparatus”** for depositing condiment pieces into a mold. It would *not have* been obvious to modify Bogdan because the teachings of Bogdan do not lend Bogdan to the use of condiment pieces or to the use of a hopper/ejection nozzle apparatus. Bogdan simply pours onto a mold. There is no motivation to modify Bogdan and there is no use for a hopper/ejection nozzle apparatus. The Examiner cannot read limitations into a reference in order to reject a claim. Bogdan liquefies material prior to pouring it into a mold. Injecting pieces of food condiment into the molds of Bogdan would require Bogdan to then liquefy the food condiment pieces. This is not taught or suggested by Bogdan and suggesting this destroys the teachings and method of the Bogdan reference.

Additionally, the Examiner has failed to address the claim limitation of ***“...said mold is conveyed beneath said ejection nozzle.”*** Nowhere in the rejection is there a discussion or obvious statement describing the conclusions of the Examiner with respect to this limitation in claim 53. Accordingly, the Office Action is incomplete and a new non-final Office action addressing all of the claim limitations is hereby requested. Otherwise, it is believed that the claim limitation is allowable.

With respect to claim 53 and the limitation of ***said mold is conveyed beneath said ejection nozzle***, Applicant submits that Bogdan does not disclose large scale or continuous operations that would benefit from the inclusion of a mold conveying operation.

The rejection does not meet the requirement of 35 USC 103 because the subject matter in the claims has not been shown to be obvious or either the Examiner simply does not address the claim limitations on their merits. Merely dismissing the claim limitations as well known and obvious is not sufficient reasoning. The Examiner is hereby requested to provide support for the well-known and obvious statements or withdraw the rejection.

- **Specifically regarding the rejection of claim 54:**

Claim 54 recites: ***“wherein said hopper/ejection apparatus comprises a laterally moving ejection nozzle that deposits said condiment pieces into said***

*mold using a full length or full width distribution as said mold is conveyed beneath said ejection nozzle.”*

The Examiner states that *“Bogdan, however is silent to a hopper/ejection apparatus...comprises a laterally moving ejection nozzle which has full length or width mold distribution...”*

The Examiner rejects claim 54 as being obvious over Bogdan by stating *“...the use of injection nozzle for filling was known in the art; this was commonly done in injection filling into donut, injecting confection into mold...The selection of an appropriate nozzle configuration to carry out the injection is a result effective variable that is well within the determination of one skilled in the art. It would have been obvious to select nozzle that would give the most optimum filling and optimization is within the skill of one in the art.”* In response, the Bogdan reference does not use, suggest, or lend itself to teachings for using a hopper/ejection nozzle apparatus. Further, Bogdan does not disclose large scale or continuous operations that would benefit from the inclusion of a hopper/ejection apparatus. Bogdan teaches a preferred apparatus and method at column 4, lines 21-29, which includes a first mold and second mold. Bogdan states, *“Molten jelly is poured into the first mold...”* Molten jelly does not constitute depositing food condiment pieces into a mold or use of a hopper/ejection apparatus. Bogdan refers to pouring as the method of deposition into a mold. Additionally, **“pouring”** does not constitute a **“hopper/ejection apparatus”** for depositing condiment pieces into a mold. It **would not** have been obvious to modify Bogdan because the teachings of Bogdan do not lend Bogdan to the use of condiment pieces or to the use of a hopper/ejection nozzle apparatus. Bogdan simply pours onto a mold. There is no motivation to modify Bogdan and there is no use for a hopper/ejection nozzle apparatus. The Examiner cannot read limitations into a reference in order to reject a claim. Note that Bogdan liquefies material prior to pouring it into a mold. Injecting pieces of food condiment into the molds of Bogdan would require Bogdan to then liquefy the food condiment pieces. This is not taught or suggested by Bogdan and suggesting this destroys the teachings and method of the Bogdan reference.

Additionally, the Examiner has failed to address the claim limitation of “...*said mold is conveyed beneath said ejection nozzle.*” Nowhere in the rejection is there a discussion or obvious statement describing the conclusions of the Examiner with respect to this limitation in claim 54. Accordingly, the Office Action is incomplete and a new non-final Office action addressing all of the claim limitations is hereby requested. Otherwise, it is believed that the claim limitation is allowable.

With respect to claim 54 and the limitation of *said mold is conveyed beneath said ejection nozzle*, Applicant submits that Bogdan does not disclose large scale or continuous operations that would benefit from the inclusion of a mold conveying operation.

The rejection does not meet the requirement of 35 USC 103 because the subject matter in the claims has not been shown to be obvious or either the Examiner simply does not address the claim limitations on their merits. Merely dismissing the claim limitations as well known and obvious is not sufficient reasoning. The Examiner is hereby requested to provide support for the well-known and obvious statements or withdraw the rejection.

- *Specifically regarding the rejection of claim 55:*

Nowhere does the Examiner address the limitation of claim 55 that “*said food condiment pieces are formed from a single condiment sheet, a face-fused condiment sheet, a side-fused condiment sheet, a face-fused-side-fused condiment sheet, a chopped condiment sheet, a woven condiment sheet, and combinations thereof.*”

The limitations of claim 55 must be read in combination with the limitations of claims 30 and 52, from which claim 55 depends. Forkner does not teach the limitations of claim 52, which requires a **hopper/ejection apparatus**. Nowhere in the rejection is there a discussion or obvious statement describing the conclusions of the Examiner with respect to claim 52 and the use of a **hopper**. Accordingly, the Office Action is incomplete and a new non-final Office action addressing all of the limitations of claim 55, which depends from claims 30 and 52, is hereby requested. Since the rejection under 35 USC 103 for claim 55 has not been met as discussed above, the Examiner is requested to

withdraw this rejection. Otherwise, it is believed that the claim limitation is allowable.

10. Claim 40 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Bogdan, Patent No. 5,855,939 in view of Luck, Patent No. 3,966,993.

• Specifically regarding the rejection of claim 40:

Claim 40 recites: “*A continuous method for forming condiment slices: a) extruding a plurality of continuous condiment sections from a plurality of extrusion nozzles, each of said continuous condiment sections having a longitudinal axis and a cross-sectional shape and area; b) abutting longitudinal surface of said plurality of continuous condiment sections with at least one other longitudinal surface of said plurality of continuous condiment sections and fusing the abutting longitudinal surfaces long their longitudinal axes to form a condiment loaf; c) feeding said condiment loaf to a cutting station; d) dividing said continuous fused combination condiment loaf to form condiment slices.*”

The Examiner indicates in the rejection: “Bogdan teaches a process for forming condiment slices...however is silent to a continuous method for forming condiment slices comprising: extruding a plurality of condiment sections from a plurality of extrusion nozzles, fusing the surfaces together to form a condiment loaf, and cutting the condiment loaf to form condiment slices...” It is noted that Bogdan does not teach any of the steps of claim 40. The Examiner applies Luck to modify Bogdan and indicates, “Luck teaches that the ingredients in the condiment structure are combined and then molded into a final strip product.”

In response, it is first noted that Luck never recites the terms “**condiment structure**” and “**strip product**” as the Examiner asserts. What Luck actually describes is a process for forming a solid sauce bar product (see Abstract; Column 1, lines 4-8). The Examiner further states, “Luck teaches that extruding or flaking and compressing may also be used in the place of molding to form the condiment structure.” Again, it is noted that Luck never recites the term “**condiment structure.**” What Luck actually discloses “...can extrude the mush without reheating to form a bar or rod...but for compactness, ease of

handling, and ease of packaging, I prefer casting it to form a bar."

Accordingly, Luck teaches that a bar or rod can be extruded for the purpose of **avoiding** reheating of the mixture. The Examiner then states, "Regarding producing the condiment strips in a continuous method, continuous processing and batch processing are well known concept in the art. It would have been obvious...to have the batch process taught by Bogdan continuous in order to increase efficiency of the process in the absence of new or unexpected results."

In response, the Examiner cannot only modify Bogdan. The Examiner must modify Bogdan in view of Luck. Note that neither reference teaches a continuous process. Both Bogdan and Luck teach batch processes. Bogdan only teaches casting into a mold and discloses at column 4, lines 21-29 "Figs 2-5 depict a preferred apparatus for forming a peanut butter and jelly slice 10 of the present invention." The preferred apparatus is shown as an open mold that allows molten material to be poured into the mold. Accordingly, the preferred method in Bogdan is pouring into a mold and the preferred apparatus in Bogdan is the depicted mold. Further, Bogdan only teaches pouring, and the molten consistency of the materials taught by Bogdan would not allow for their use in an extrusion process. Molten materials are not extruded. Therefore, it would not have been obvious to modify Bogdan, as the Examiner suggests, because Bogdan's chosen method is to pour into a mold and, therefore, the Bogdan method is not open to modification. It is also essential for Bogdan to pour material because of the encapsulated shape for the final product (see Column 4, lines 53-63). Bogdan desires a simple straightforward molding method – not a continuous extrusion method, as claimed by Applicant.

Luck teaches preference to casting for the advantages of compactness, ease of handling, and ease of packaging, as discussed above. Accordingly, it would not have been obvious or prudent to eliminate these advantages, as taught by Luck, from the method of Bogdan, by introducing extrusion – especially since Bogdan teaches away from using other methods. Note that Bogdan also desires to package the final product. It is also noted that Luck teaches at Column 3, lines 28-32, "The bar package can be permeable to atmospheric moisture..." Bogdan teaches at Column 5, lines 9-11, "The food slice 10 is then sealingly wrapped in a flexible covering 29..." Accordingly, it is the desire of

Bogdan to seal the product package, while Luck allows the packaging to be permeable. Thus, Bogdan teaches away from packaging that would be detrimental to the final product. Accordingly, the two references diverge on the type of packaging that may be used and, therefore, jointly teach away from their combination.

The Examiner also states: *“Regarding extruding a plurality of condiment sections from a plurality of extrusion nozzles, Bogdan teaches forming a plurality of condiment sections by molding. Luke teaches that the condiment sections can be extruded...it would have been obvious...to substitute one art recognized functional equivalent (i.e. extruding multiple strips) for another (i.e. molding multiple strips) in the process of forming a condiment strip as disclosed by Bogdan, depending on which equipment were more available and affordable...”*

Again, it is noted that Luck never recites the terms **“condiment sections”** or **“extruding multiple strips”** or **“molding multiple strips”** or **“condiment strip.”** Additionally, the Examiner never advances any reason of obviousness for using a **plurality** of extrusion nozzles. The Examiner’s makes the statement *“Regarding extruding a plurality of condiment sections...”* However, this is not what Applicant has claimed. Applicant claims, **“extruding a plurality of continuous condiment sections...”** The term **“continuous”** has meaning and cannot simply be disregarded. Nowhere in the rejection is there a discussion or obvious statement describing the conclusions of the Examiner with respect to claim 40 and the method step of ***extruding continuous condiment sections***. Accordingly, the Office Action is incomplete and a new non-final Office action addressing all of the limitations of claim 40 is hereby requested. Since the rejection under 35 USC 103 for claim 40 has not been met as discussed above, the Examiner is requested to withdraw this rejection. Otherwise, it is believed that the claim limitation is allowable.

For the Examiner to proclaim that it would have been obvious to substitute the equipment used by Bogdan with other equipment based merely on availability and affordability removes entirely the inventive process from Bogdan. As indicated previously Bogdan only teaches pouring, and the molten liquid consistency of the materials taught by Bogdan would not allow for their

use in an extrusion process. Molten liquid materials are not extruded. Therefore, it would not have been obvious to modify Bogdan, as the Examiner suggests, because Bogdan's chosen method is to pour into a mold and, therefore, these are not art recognized equivalents, as advanced by the Examiner. The Bogdan method is not open to modification.

The Examiner also states: *"Regarding fusing the surfaces together to form a condiment loaf, and cutting the condiment loaf to form condiment slices, Bogdan teaches that it is desirable to form condiment slices and then combine them together; Bogdan teaches, when desired, loafs of condiment, including a loaf of jelly, peanut butter, and jelly is formed. It would have been obvious...to fuse the condiment loaf as taught by Bogdan together so that when applying the condiment to a sandwich or other food product the condiment remained intact and together. It would have been further obvious...to slice to the size of the bread for which the condiment slice was to be placed on."*

In response, Bogdan does not form loafs of condiment and does not teach a loaf of jelly, peanut butter, and jelly. The method of Bogdan is to form a combination food slice. At column 4, lines 17-19, Bogdan describes, *"Preferably, however, the peanut butter and jelly slice 10 is sized to fit onto a slice of bread (about 3.5" wide by 4.0" long and is about 3/8" thick."* Also Bogdan discloses at column 4, lines 21-29, *"Figs 2-5 depict a preferred apparatus for forming a peanut butter and jelly slice 10 of the present invention."* The preferred apparatus is shown as a sandwich-sized open mold that allows molten material to be poured into the mold. Accordingly, the preferred method in Bogdan is pouring into a mold having the dimensions of the slice and the preferred apparatus in Bogdan is the depicted mold. Bogdan does not teach, disclose, or suggest forming a condiment loaf. Accordingly, the Examiner has misrepresented the teachings of Bogdan under 35 USC § 103 and is requested to withdraw this rejection. Also, in response to the Examiner's statement, *"It would have been obvious...to fuse the condiment loaf as taught by Bogdan..."* First, Bogdan does not teach a condiment loaf or fusing a condiment loaf, as discussed above. Second, Applicant's claim recites, *"...abutting longitudinal surface of said plurality of continuous condiment sections with at least one other longitudinal surface of said plurality of continuous condiment*

*sections and fusing the abutting longitudinal surfaces long their longitudinal axes to form a condiment loaf...*” Note that continuous condiment sections are formed **individually** through extrusion, then abutted and fused along their longitudinal axes to form a condiment loaf. Bogdan does not form intact condiment slices and then abut and fuse them. Neither Bogdan nor Luck teaches this step or any other step in the claim.

The Examiner also states: *“It would have been further obvious...to slice the condiment loaf into condiment slices in order to tailor the condiment slice to the size of the bread...”* In response, Bogdan does not disclose a loaf for which to slice. Also, as conveyed previously, Bogdan forms the slices using a mold having the desired dimensions of the food slice. At column 5, lines 5-6, Bogdan discloses: *“The resultant peanut butter and jelly slice 10 is then removed from the second mold 18 and packaged.”* Thus, it is the objective of Bogdan to form the food slice, remove it from the mold, and then package the food slice. Accordingly, it would not have been obvious to introduce a cutting step in the method of Bogdan because: 1) Bogdan does not produce a food slice that requires cutting; 2) Bogdan does not form or mold a loaf that would require cutting; 3) Bogdan does not extrude continuous condiment sections; 4) Bogdan teaches forming the food slice in a mold, removing it from the mold, and packaging. No cutting step is warranted. The Examiner has completely disregarded the teachings of Bogdan and is implying that the reference communicates a teaching that is entirely absent.

It appears that Luck is being combined with Bogdan because Luck mentions extruding a bar. What Luck actually discloses *“...can extrude the mush without reheating to form a bar or rod...but for compactness, ease of handling, and ease of packaging, I prefer casting it to form a bar.”* Accordingly, Luck teaches that the bar or rod can be extruded for the purpose of **avoiding** reheating of the mixture. It is noted that the sauce bar of luck is not intended for “sandwich making” as desired by Bogdan. Luck teaches *“My sauce bars are manufactured for ready conversion in aqueous liquid to appetizing sauces and gravies...reconstitution of the bar in these liquids can be achieved...by warming the liquid...and by agitation of the sauce bar-liquid dispersion...”* Accordingly, it is not the goal of Luck to form food slices for

sandwiches. Applicant's claim recites, "...*abutting longitudinal surface of said plurality of continuous condiment sections with at least one other longitudinal surface of said plurality of continuous condiment sections and fusing the abutting longitudinal surfaces long their longitudinal axes to form a condiment loaf...*" Note that continuous condiment sections are formed **individually** through extrusion, then abutted and fused along their longitudinal axes to form a condiment loaf. Luck does not teach, disclose, or suggest forming a condiment loaf formed from a plurality of continuous individual condiment sections. Neither Bogdan nor Luck teaches this step or any other step in the claim. At column 4, lines 67-68, Luck discloses: "*It was easily packaged by wrapping with sheet material and stacked on a shelf for storage.*" Thus, it is the objective of Luck to form the sauce bar, remove it from the mold after casting, and then package the sauce bar. Accordingly, it would not have been obvious to introduce a cutting step in the method of Luck because 1) Luck does not produce a sauce bar that requires cutting; 2) Luck does not form or mold a continuous loaf that would require cutting; 3) Luck does not extrude continuous condiment sections, nor a plurality of continuous condiment sections; 4) Luck teaches forming the sauce bar in a mold, removing it from the mold, and packaging. No cutting step is warranted. The Examiner has completely disregarded the teachings of Luck and is implying that the reference communicates a teaching that is entirely absent.

**The Examiner has dismissed the entire claim as being well known and obvious and, also, indicates that Bogdan and Luck teach and use terminology that simply does not exist and clearly is not supported.**

The rejection does not meet the requirement of 35 USC 103 because the subject matter in the claims has not been shown to be obvious or either the Examiner simply does not address the claim limitations on their merits. Merely dismissing the claim limitations as well known and obvious is not sufficient reasoning. The Examiner is hereby requested to provide support for the well-known and obvious statements or withdraw the rejection.

11. Claims 37 and 43-45 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Alden, Patent No. 5,894,028.

- Specifically regarding the rejection of claim 37:

Claim 37 recites: *“wherein said step of joining comprises positioning said condiment sections in a first mold section such that said surfaces are in an abutting relationship forming a fusion line adjacent a first heating/cooling plate; mating a second mold section having a second heating/cooling plate with said first mold section such that said fusion line is adjacent said second heating/cooling plate; heating said first and second heating/cooling plate to cause said abutting condiment sections to flow and fuse together along said fusion line.”*

The Examiner states that *“Alden teaches of a method for forming condiment slices from condiment strips, however, is silent to two condiment sections each placed in molds with heating plates which fuse and heat together the condiment sections...”* The Examiner rejects claim 37 as being obvious over Alden by stating *“It would have been obvious...to use a mold with heating plates which fuse the material inside into one in order to combine the steps of fusing and molding...”*

In response, Applicant’s claim does not recite *“two condiment sections each placed in molds”* as the Examiner contends. Additionally, Alden does not teach, discuss, or suggest a method of forming condiment slices. Alden teaches **a method of forming pizza sauce disks** (see Alden reference). Nowhere in the Alden reference is there a discussion of forming condiment slices. Further, Alden does not recite, as the Examiner notes, the limitation of *“positioning condiment sections in a first mold section such that said surfaces are in an abutting relationship forming a fusion line adjacent a first heating/cooling plate; mating a second mold section having a second heating/cooling plate with said first mold section such that said fusion line is adjacent said second heating/cooling plate; heating said first and second heating/cooling plate to cause said abutting condiment sections to flow and fuse together along said fusion line.”* Nowhere does Alden teach any of these claimed limitations. Note there is claimed two mold sections, two heating/cooling plates, a fusion line formed by the adjacent food condiment sections, and a fusion line adjacent both

of the first and second heating/cooling plates. The reason for two heating/cooling plates is the need to heat the fusion line, formed by the abutment of the food condiment sections, on all sides; and to maintain the original shape and form of the food condiment sections.

It is further noted that it would not have been obvious to have modified Alden to use a mold with heating plates because: 1) Alden's methods do not lend nor require the use of multiple molds sections with heating plates; 2) Alden teaches forming surfaces such as support sheet 16, conveyor belt 24 or pans. Alden teaches that the support sheets 16 are constructed of silicon-coated baker's type paper (see column 4, lines 27-38). It is not the intention of Alden to use silicon-coated paper as a heating plate. Rather, it is the intention of Alden to use support sheet 16, along with cover sheet 18, as packaging materials for storage, packaging, and shipment of the pizza disks following their manufacture (see column 3, line 63 through column 4, line 6; column 5, lines 35-49, column 6, lines 2-7 and 8-20; column 7, lines 35-41; column 8, lines 17-25 and 58-67). The heating/cooling plates claimed by Applicant do not function as storage, packaging and shipping materials. Accordingly, one of ordinary skill would not substitute the support sheet 16 of Alden with heating/cooling plates because such a modification would destroy the teachings and intent of Alden to use the support sheet 16 as the combination of forming surface, storage, packaging, and shipping material.

It is also noted that Claim 37 further limits claim 21 and must be read in combination with independent claim 21. Alden does not show or teach the limitations of claim 21, from which claim 37 depends. Specifically, Alden does not teach: "*a) forming condiment sheets; b) dividing said condiment sheets into condiment sections; c) joining surfaces of said condiment sections to form said condiment structure.*" The intention of Alden is to make pizza sauce disks – not to form food condiment sheets, divide the food condiment sheets into sections, and then join the sections by positioning the sections in a first mold section such that surfaces are in an abutting relationship forming a fusion line adjacent both first and second mold sections having heating/cooling plates. In fact, Alden does not disclose, teach, or suggest forming condiment sheets.

Note that the claimed limitation requires that the food condiment sheets be formed as part of the process.

The rejection does not meet the requirement of 35 USC 103 because the subject matter in the claims has not been shown to be obvious. Merely dismissing the claim limitations as well known and obvious is not sufficient reasoning. The Examiner is hereby requested to provide support for the well-known and obvious statements or withdraw the rejection.

- Specifically regarding the rejections of claims 43 and 44:

Claim 43 recites: *“wherein said woven structure is a woven condiment sheet and said method further comprises performing single successive cuts on said at least one woven condiment sheet to form woven condiment slices; said cutting step causing woven peripheral edge portions of said woven condiment slice to bond together to retain said woven form.”*

Claim 44 recites: *“wherein said woven structure is a woven condiment sheet and said method further comprises performing a single cutting operation on said woven condiment sheet to simultaneously form a plurality of woven condiment slices, said cutting step causing woven peripheral edge portions of each of the plurality of woven condiment slices to bond together to retain said woven form.”*

The Examiner states that “Alden teaches forming condiment slices from condiment strips, however, is silent...to cutting the woven condiment structure in one single cutting operation composed of performing single successive cuts, wherein cutting binds together the condiment slices...”

The Examiner states “it was known...to cut a pizza in one single cutting operation composed of performing single successive cuts, wherein the cutting binds together the pizza toppings, when the pizza is warm when cut. Alden teaches a woven condiment structure, which comprises the pizza toppings and is to be placed on pizza crust.”

In response, Alden does not teach, discuss, or suggest a method of forming condiment slices. Alden teaches **a method of forming pizza sauce disks** (see Alden reference). Nowhere in the Alden reference is there a discussion of forming condiment slices. Additionally, the Examiner indicates, “performing

*single successive cuts, wherein cutting binds together the condiment slices...*” It is noted that the claim *does not* recite: **cutting binds together the condiment slices**. What the claim actually recites is *“said cutting step causing woven peripheral edge portions of said woven condiment slice to bond together to retain said woven form.”* The Alden reference does not recite this claim limitation. Further, Alden does not recite, as the Examiner notes, the limitation of claim 43 *“wherein said woven structure is a woven condiment sheet and said method further comprises performing single successive cuts on said at least one woven condiment sheet to form woven condiment slices; said cutting step causing woven peripheral edge portions of said woven condiment slice to bond together to retain said woven form.”*

Additionally, Alden does not recite, as the Examiner notes, the limitation of claim 44 *“wherein said woven structure is a woven condiment sheet and said method further comprises performing a single cutting operation on said woven condiment sheet to simultaneously form a plurality of woven condiment slices, said cutting step causing woven peripheral edge portions of each of the plurality of woven condiment slices to bond together to retain said woven form.”* Nowhere does Alden teach any of the limitations of claims 43 and 44.

First, Alden does not disclose a woven condiment sheet, does not disclose woven condiment slices, and does not teach a pizza with woven condiment strips. The Examiner implying that pizza toppings placed on a pizza crust defines a woven condiment is a serious misrepresentation of the reference. Specifically, Alden does not teach: providing strips and/or strands formed from at least one condiment; interweaving said individual strips and/or strands of said at least one condiment to form said condiment structure. The Alden reference has no similarities to Applicant’s claimed method.

Second, Alden does not disclose cutting a woven food condiment sheet to form a woven food condiment slice or a plurality of food condiment slices using a single cut. The weaving of food condiment strips, as claimed by Applicant, are not addressed, disclosed, or recited in the Alden reference. Dispensing or distributing pizza ingredients does not constitute a weaving operation.

Third, **Alden does not disclose cutting a woven condiment sheet.** Alden does not even disclose a woven condiment sheet. The Examiner suggesting that cutting pizza is equivalent to cutting a woven food condiment sheet is unreasonable and unsupported. The rejection does not meet the requirement of 35 USC 103 because the subject matter in the claims has not been shown to be obvious. Merely dismissing the claim limitation as obvious is not sufficient reasoning. The Examiner is requested to provide support for the well-known and obvious statements.

Fourth, **The Applicant's claim is not drawn to slicing pizza, as stated by the Examiner.**

Fifth, The Examiner states, *"cutting binds together pizza toppings, when the pizza is warm when cut."* Applicant's claim is not drawn to cutting pizza. Further, it is unclear how and in what way does cutting bind pizza toppings. This statement is unsupported and has no relationship to Applicant's claimed method. Applicant is not binding pizza toppings, is not cutting pizza, and does not claim a heating step. It is also noted that it is not the intention of Alden to cut the pizza disk. In fact, it is the intention of Alden to manufacture an intact pizza disk for packaging and shipment to establishments where the pizza sauce disk can be placed on a crust (see column 8, lines 52-57). Alden explains that *"...the pizza sauce disk can be...applied to pizza crust 14...When the pizza order is received, the appropriate disk is selected from storage...because of the gel structure within the pizza sauce 32, the disk can be readily handled and removed from sheets 16 and 18 without tearing the thin edges of the disk 12...and manipulated as desired without tearing, breaking or smearing the sauce."* Thus, it is the intention of Alden not to cut, break, or tear the pizza sauce disk during the method of manufacture. Accordingly, modifying the Alden process by cutting would destroy the teachings and direct intention of Alden of manufacturing, packaging, and delivering an intact, uncut, un-torn, unbroken, whole pizza disk. The Examiner is attempting to make obvious in Alden the cutting of pizza, as practiced by consumers, outside of the method or operation of forming the pizza disk. *The action of cutting pizza does not apply to the manufacturing process of Alden.* Accordingly, it **would not** have been obvious to modify Alden to cut the pizza disk because Alden specifically

teaches away from such a practice. The rejection does not meet the requirement of 35 USC 103 because the subject matter in the claims has not been shown to be obvious. The Examiner is requested to withdraw this rejection.

It is also noted that each of Claims 43 and 44 further limits claim 22 and each must be read in combination with independent claim 22. Alden does not show or teach the limitations of claim 22, from which each of claims 43 and 44 depends.

The rejection does not meet the requirement of 35 USC 103 because the subject matter in the claims has not been shown to be obvious. Merely dismissing the claim limitations as well known and obvious is not sufficient reasoning. The Examiner is hereby requested to provide support for the well-known and obvious statements or withdraw the rejection.

- **Specifically regarding the rejection of claim 45:**

Claim 45 recites: *“wherein said method further comprises applying an edible edge sealer to the peripheral edges of said woven condiment structure and applying heat to said edible edge sealer to cause the edible edge sealer to flow into the interstices of the woven condiment strips and/or strands to retain the weaving pattern of the woven condiment structure.”*

The Examiner states that *“Alden teaches a woven condiment structure, which comprises the pizza toppings and is to be placed on pizza crust and baked.”*

The Examiner has rejected the claim by stating that *“it would have been obvious to meet all of these claimed limitations by placing the pizza sauce disk on a pizza crust and baking to cause the pizza crust to rise to form a lip around the edge of the pizza and the condiments inside and this would act as an edible edge sealer.”* The rejection states, *“...the crust will rise to form a lip around the pizza and condiments inside.”*

In response, Alden does not teach, discuss, or suggest a method of forming condiment slices. Alden teaches **a method of forming pizza sauce disks** (see Alden reference). Nowhere in the Alden reference is there a discussion of forming condiment slices. Alden does not disclose a woven condiment sheet, does not disclose woven condiment slices, and does not teach a pizza with

woven condiment strips, does not disclose an edge sealer. The Examiner implying that pizza toppings placed on a pizza crust defines a woven condiment is a serious misrepresentation of the reference. Specifically, Alden does not teach: providing strips and/or strands formed from at least one condiment; interweaving said individual strips and/or strands of said at least one condiment to form said condiment structure. The Alden reference has no similarities to Applicant's claimed method.

Also, modifying the Alden process by cutting would destroy the teachings and direct intention of Alden of manufacturing, packaging, and delivering an intact, uncut, un-torn, unbroken, whole pizza disk. The Examiner is attempting to make obvious in Alden the cutting of pizza, as practiced by consumers, outside of the method or operation of forming the pizza disk. The action of cutting pizza does not apply to the manufacturing process of Alden.

Note that the claimed method limitation requires that the edible edge sealer be applied to the peripheral edges of the woven condiment structure. First, Alden does not teach a woven condiment structure. Second, Alden does not apply an edible edge sealer to the peripheral edges of woven food condiment. Third, there is no teaching in Alden of applying heat to an edible edge sealer to cause the edible edge sealer to flow into the interstices of the woven condiment strips and/or strands to retain the weaving pattern of the woven condiment structure. The condiments of Applicant's woven food condiment structure are not "inside" and do not sit on a base formed of edge sealer. Additionally, the ingredients of pizza are not retained in place by the crust.

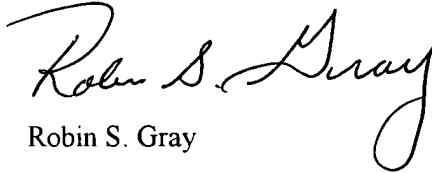
Also, the Examiner never addresses the **"flow of the edge sealer into the interstices of the woven food condiment."** Accordingly, the Office action is incomplete and a new non-final Office action addressing all of the claim limitations is hereby requested.

The rejection does not meet the requirement of 35 USC 103 because the subject matter in the claims has not been shown to be obvious or either the Examiner simply does not address the claim limitations on their merits. Merely dismissing the claim limitations as well known and obvious is not sufficient reasoning. The examiner is hereby requested to provide support for the well-

known and obvious statements or withdraw the rejection. Otherwise, it is believed that the claim limitation is allowable.

Applicant respectfully submits that the above amendments and/or arguments place the application for patent in condition for allowance and early notification to that effect is respectfully requested.

Respectfully submitted,



Robin S. Gray

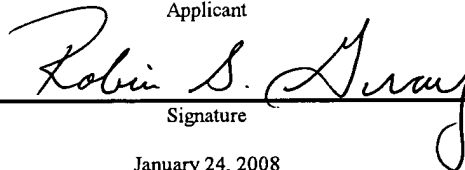
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I hereby certify that this correspondence is being deposited with the United States Postal Service as Post Office To Addressee with Express mail label Number: EQ 651412364 US addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria Virginia 22313-1450, on January 24, 2008.

Robin S. Gray

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Applicant



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Signature

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January 24, 2008

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Date of Signature